COURT OF APPEALS OF KENTUCKY

RENDERED: MAY 15, 1970

NOLYNN ASSOCIATION OF SEPARATE BAPTISTS IN CHRIST OF KENTUCKY, ET AL., ETC., - *Appellants,*

v.

OAK GROVE SEPARATE BAPTIST CHURCH, ET AL., - *Appellees.*

Appeal from Green Circuit Court,
Honorable C. R. Walden, Judge.

OPINION OF THE COURT BY JUDGE MILLIKEN—AFFIRMING.

This is an appeal by the Nolynn Association of Separate Baptists in Christ from a judgment of the Green Circuit Court holding that the Oak Grove Separate Baptist Church is an independent church, congregational in its government, and that the Nolynn Association has no jurisdiction or control over the property or internal affairs of the Oak Grove Church. The members of the Presbytery Board of the Nolynn Association were enjoined from interfering with the operation of the internal affairs or the property of the Oak Grove Church.

Disagreement arose between the Association and the Oak Grove Church when a member of the church questioned the Presbytery Board's action in disordaining his

son who was a minister. When the pastor of the Oak Grove Church, the appellee, Terry Bishop, was unable to, or did not, influence the Church to omit the name of this protesting member from the list of delegates to the 1968 Association meeting, Bishop's ministerial license also was revoked and the Board (without the consent of the Church) appointed another pastor to take his place.

Meanwhile, the Church decided by a majority vote to withdraw from the Association, and then cancelled the church memberships of all those voting not to withdraw. The Association argued that no local church could withdraw without the Association's approval because the by-laws of the Association required it. The appellees contend that these by-laws which had appeared in print only in recent years (the withdrawal regulation appeared in 1965, less than two years prior to the commencement of the controversy between Oak Grove Church and the Association) are an assumption of power by the Board unwarranted by traditional Separate Baptist Church organization.

Because freedom of religion is protected by the First Amendment, the courts ordinarily are unwilling to become involved in the resolution of controversies over religious doctrines and practices, Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 21 L. Ed. 658, 89 S. Ct. 601 (1969); Pelphrey v. Cochran, ____ S. W. 2d ____ (February 27, 1970). Religious disagreements are more appropriately settled by the person or group of persons who, according to the type organization employed in the particular church, have been vested with decision-making authority. The center or location of organizational authority varies with different sects and its location is really the chief issue here. Courts have accepted jurisdiction, in cases involving the withdrawal of a local church from the general church, for the very limited purpose of determining the nature of

the church government. We have recognized three basic forms of church government: (1) prelatical, in which the governing power resides in prelates or diocesan bishops and the higher clergy; (2) presbyterian, with the governing power residing in assemblies, synods, presbyteries, and sessions; (3) congregational, in which each local church administers its own government by the voice of the majority of its own members. Membership in an association does not prevent the church government from being congregational in form. Thomas v. Lewis, 224 Ky. 307, 6 S. W. 2d 255 (1928); Kidwell v. Crawford, 298 Ky. 380, 182 S. W. 2d 968 (1944); Mullins v. Elswick, Ky., 438 S. W. 2d 496 (1969).

There was evidence introduced in this case that the Oak Grove Separate Baptist Church generally attended to its own affairs, handled its own finances and selected its own church officials. A document purporting to be the original constitution of the Oak Grove Separate Baptist Church, when it was known as the Mount Carmel Church, states that all business should be done by the majority of the Church. The property of the Church is held in the name of the trustees of Oak Grove Baptist Church.

The Presbytery Board, it is contended, was originally set up for the limited purpose of aiding in the ordination of ministers, not as a ruling church authority. Appellees presented a disinterested witness, a professor of church history at a Baptist Seminary, who testified that the Separate Baptist Churches are congregational in form. We conclude that there was substantial evidence from which the trial court could reasonably conclude that the Separate Baptist Church is congregational in form, and that, therefore, the Oak Grove Separate Baptist Church is entitled to regulate its internal affairs, See Mullins v. Elswick, Ky., 438 S. W. 2d 496 (1969).

Consequently, we can not say that the trial court's findings are clearly erroneous, or erroneous at all. CR 52.01.

The judgment is affirmed.

All concur.

Neikirk, J., not sitting.

Attorney for Appellants:
J. WOOD VANCE, JR.,
Yancey Building,
Glasgow, Kentucky

Attorneys for Appellees:
RIHERD & RICHARDSON,
East Public Square,
Glasgow, Kentucky.

GREEN CIRCUIT COURT

Civil Action Nos. 1647, 1655 and 1651

NOLYNN ASSOCIATION OF SEPARATE BAPTISTS IN CHRIST OF KENTUCKY and
WHEELER DAVIS, S. C. JOHNSON and J. A. HUFF, Members of the Presbytery Board of the Nolynn Association of Separate Baptists in Christ of Kentucky, - - - - - - *Plaintiffs,*

v.

OAK GROVE SEPARATE BAPTIST CHURCH,
TERRY BISHOP,
RALPH JEFFRIES, ET AL., - - - - - *Defendants.*

ORDER.

Pursuant to and in accordance with the Findings of Fact and Conclusions of law made and entered herein; It is now ordered, adjudged and decreed as follows:

(1) The Oak Grove Separate Baptist Church is an independent body and as such its affairs are governed by the congregational type of Church Government.

(2) The Oak Grove Separate Baptist Church prior to the commencement of this litigation, by a majority vote of its members, withdrew from membership in the Nolynn Association, and thereafter the Association, nor any of its agencies, have had jurisdiction or control over the property or internal affairs of the Oak Grove Church.

(3) Actions Nos. 1647 and 1651 are hereby dismissed and the restraining orders issued therein are dissolved.

In action No. 1655 the Presbytery Board of the Nolynn Association of Separate Baptist In Christ of Kentucky, and the members of said Presbytery Board, Wheeler Davis, S. C. Johnson, and J. A. Huff, are hereby enjoined from interfering with the operation of the internal affairs, or the property, of the Oak Grove Separate Baptist.

(4) Pursuant to KRS 453.040, the costs of all three actions shall be paid by the Nolynn Association of Separate Baptist In Christ of Kentucky, Wheeler Davis, S. C. Johnson, and J. A. Huff, members of the Association Presbytery Board, jointly and severally, for which costs execution may issue.

This the 18th day of June, 1969.

/s/ C. R. WALDEN, *Special Judge, Green Circuit Court.*

GREEN CIRCUIT COURT

Civil Action Nos. 1655 and 1651, and 1647

NOLYNN ASSOCIATION OF SEPARATE BAPTISTS IN CHRIST OF KENTUCKY and
WHEELER DAVIS, S. C. JOHNSON and J. A. HUFF, Members of the Presbytery Board of the Nolynn Association of Separate Baptists in Christ of Kentucky, - - - - - - *Plaintiffs,*

v.

OAK GROVE SEPARATE BAPTIST CHURCH,
TERRY BISHOP,
RALPH JEFFRIES, ET AL., - - - - - *Defendants.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This suit involves a dispute, division and argument within the Separate Baptist denomination. The Nolynn Association of Separate Baptists in Christ of Kentucky (hereafter Association) is an organization composed of fifteen Separate Baptist Churches. The Presbytery Board (hereafter the Board) is an organization created by the Association and charged with the responsibility of performing certain duties and functions of the Association. The Oak Grove Separate Baptist Church, (hereafter Church) is a local church located in Green County and is, or was, one of the fifteen churches composing the Association.

The Association and Board started this litigation by filing suit against Terry Bishop and obtained a restraining order enjoining him from preaching, in, or acting as minister, of the Church. The Church filed its complaint and obtained a restraining order enjoining the Board, from inter-

fering with the business and affairs of the Church in any manner. The Association and the Board came right back with another suit against some of the officers and members of the Church and enjoined them from interfering with the Board in dealing with the ministers, members of the Church and Church property, as the Board was authorized to do by its by-laws.

The court, by order dated January 18, 1969, consolidated the three aforesaid actions and provided, in effect, that the restraining orders remain in force, except for the purposes of funerals and Sunday School. Thereafter, a considerable amount of proof, in the form of depositions, has been taken by both sides of the controversy in support of their respective positions.

Two or three of the witnesses, by their evidence, undertake to relate the history of the Separate Baptist movement in the United States. In so doing reference is made to much Church history and what many Church historians had to say about the Separate Baptist. The evidence shows, unquestionably that the Separate Baptist are identified with the earliest religious history of this country, dating back as a distinct denomination to as early as 1740, or thereabout. The Separate Baptist established churches in Virginia, the Carolinas, Tennessee and Kentucky in the eighteenth century. The Southern Kentucky Association of Separate Baptist was formed in about 1785.

The Nolynn Association was established in 1819, made up of churches from the Southern Kentucky Association. The Association's business and affairs are transacted at its annual meetings. Each of the member churches send delegates to the Association, who, by majority vote, transact the business of the Association. All ordained ministers and deacons are delegates from the Church they belong to and each member church is permitted to elect additional delegates, the number based on the size of the Church's membership.

It appears that the controversy here began to develop sometime immediately prior to the meeting of the Association in September, 1967. The Board investigated the conduct of two of the ordained ministers of the denomination and found these ministers to be "unworthy," or unfit, for a minister and revoked their license to preach. These ministers were not members of the Oak Grove Church and were not serving this Church in any capacity. However, the father of one of these ministers, who was also an ordained minister and a member of the Oak Grove Church, but not its pastor, questioned the Board's action of "defrocking" his son and as a result he was also "defrocked" by the Board. When the 1967 Association met the Oak Grove Church's letter to the Association listed the name of the latter named minister, as a minister and therefore one of their delegates to the Association. Because of this, the Oak Grove Church's delegation was accepted conditionally, conditioned that the Church, before the Association met in 1968, remove from its list of delegates the name of this minister. The defendant, Terry Bishop, one of the ordained ministers of the denomination was pastor of the Oak Grove Church at the time. As such, he caused the proposition of the Church ceasing to list the name of the minister, whom the Board had "defrocked" as a minister, to be put to the Church membership for a vote and a majority of the Church members voted it down. As a result the Church did not send a letter to the 1968 Association meeting. Although some members and ordained officials of the Church did not attend the 1968 Association, the record is not clear if they were recognized by the Association as official delegates of the Church. At any rate, thereafter the Board revoked the ministerial license of the defendant, Terry Bishop, because he, as pastor of the Church, had been unable, or did not influence the Church to meet the condition which the Association had required of the Church with respect to the Church's ceasing to list the name of the "defrocked" minis-

ter as one of their delegates to the Association. Thereafter the Board undertook to and did appoint a pastor for the Church. This pastor designated by the Board was unable to preach because the doors of the Church were locked. However, this preacher, and his backers in the Church, did gain admittance to the Church building and elected a Church Clerk and a janitor and requested the regular clerk and janitor to turn over to them the keys and Church records. But before all this happened, at a regular business meeting of the Church, a majority voted to withdraw the Church from membership in the Association. A question arose that they had not followed the By-Laws of the Association in that they had not given each member written notice of the Church's intention to withdraw from the Association. Written notice was given each member, another meeting was held and again a majority of the members of the Church voted to withdraw from the Association. The members who opposed the Church withdrawing from the Association were dismissed from Church membership.

The Oak Grove Church as it now exists dates back to 1895. Prior to this date the congregation had been known by other names and met at other places, but were Separate Baptist. The Church acquired its property by deed March 26, 1909. Title thereto is vested in the Trustees of the Oak Grove Separate Baptist Church.

The Association has filed in evidence minutes of its annual meetings for the years 1960 to 1967. The Church has filed copies of the minutes of its meetings which pertain to the conflict between the Church and Association. The Church has filed what appears to be a page from the minutes of the 1919 meeting of the Association. The Church has also filed a copy of an instrument which they contend is the Oak Grove Church's Constitution. The instrument bears the date of 1882. At that time the Churches was known as "Mt. Carmel Church." This instrument insofar as here pertinent, states "that we as the followers of Christ

deny any right to be governed by any dissipline (sic) or rule of decorum creeds or confession of faith set up by men aside from the Scriptures of Old and New Testament . . . that all business should be done by the majority of the Church."

The minutes of the 1919 meeting of the Association provide: "This body shall have an Association Presbytery composed of three ordained ministers whose duty it shall be to examine the doctrine preached by its ministers and when called upon to attend the ordination of candidates for the ministery from churches composing this body. The several churches are recommended to use this presbytery to ordain their candidates for the ministery, their duties are to extend from one session of this body to another. They are to make a report at each session." It appears therefore that the Presbytery Board, as an agency or arm of the Association had it beginning at the annual meeting of the Association in 1919.

The 1953 minutes of the Association do not contain associational Rules of Order or By-Laws which purport to give the Association, or the Presbytery Board, any authority over the selection, ordination and discipline of deacons and ministers by the member churches. The 1960 minutes of the Association show that the Rules of Order have provisions which provide for the Association, through its Presbytery Board, to have the control over the ordination and ministers, if such officials of the Church are to be recognized by the Association.

In 1960, therefore, the Association, for the first time, or sometime between 1953 and 1960, adopted provisions which are designed to give unto the Association such authority over the ordination and discipline of the deacons and ministers of the Church.

The 1965 minutes of the Association show, for the first time, a set of By-Laws were adopted by the Association.

Other than the right to choose the person whom the Church desire to become a deacon or minister, these By-Laws give the Association by and through its Presbytery Board, complete authority over the fitness, qualifications, ordination, and discipline of the deacons and ministers.

The 1966 minutes of the Association show that for the first time the By-Laws provide for the mode and manner by which a Church may withdraw from the Association. The effect of the provisions are that a Church cannot withdraw from the Association unless a majority of the delegates to the Association vote to permit them to withdraw.

By the time the Association convened at its annual meeting in September, 1967, the trouble with the Oak Grove Church was already on the horizon. The Association again amended its By-Laws as follows: "To clarify the position of the Presbytery, it is as follows:

(a) The Presbytery has the (Ecclesiastical) right and power to investigate any ordained official or any serious matter in the churches that may affect the harmony and doctrine of this Association and has power to deal with such, as they deem proper.

(b) The moderator or the Presbytery has the right to select committees at any time to assist in investigations and recommendations, as they deem necessary.

(c) All deacons and ministers are required to live and conduct themselves in a Christian manner and be in harmony with the Association at all times.

CONCLUSIONS OF LAW

By the authority of its By-Laws the Association claims that it has the authority to deal with the Church as it has here. That is, until such time as the Church does the things which the Association has required of it the Association has the authority and responsibility to designate the pastor and other officers of the Church, and generally conduct the

affairs of the Church until such time as the Church is again in harmony and good standing with the Association.

It is the contention of the Church that it is an independent, self-governing body and as such the Association has no authority over its internal affairs and besides it has withdrawn its membership from the Association.

The basic question to be determined by the Court is whether the Church is an independent, self-governing local Church, or is its affairs, to the extent sought here, subject to the control of the Association.

In the case of Thomas v. Lewis, 224 Ky. 307, 6 S. W. 2d 225, the Court said:

> "Different Christian denominations have different forms of government. There are three forms of government which have gained prevalence in Christian communities, and which are still maintained. It may be that all classes of Christian churches may be brought under one or the other of these three forms of church government. One is the prelatical form in which the governing power resides in prelates or diocesan bishops and the higher clergy. To this form of government may be assigned the Roman, Greek, English, and most Oriental Churches. Another is the Presbyterian form in which the governing power resides in assemblies, synods, presbyteries, and sessions. To this form of government may be assigned the Scottish Church, the Lutheran, and various Presbyterian Churches, and the Methodist. Another is the independent or congregational form in which the body is selfgoverning, each single and local church administering its own government by the voice of the majority of its members. To this form may be assigned the Baptists, Congregationalists, Christian, and other independent churches. Much has been written through the ages about the form of church government, those adherring to any particu-

lar form claiming that it comes down from the apostolic churches. Baptists hold that each separate, local church is an independent body governing itself according to the laws of Christianity as found in the New Testament. They hold that every local church is independent of all other churches and of all other persons so far as administration is concerned. The Baptists hold that they owe comity and fellowship to all, but allegiance and submission to none. The government is administered by the body of the members where no one possesses a preeminence of authority, but each member has equality of rights, and where there are differences in matters of opinion the majority decides."

The above case clearly and plainly defines and distinguishes the various forms of Church governments by which Christian Churches are governed.

Numerous other cases could be cited supporting the above definition of the various forms of Church government.

The question then is the Separate Baptist Denomination subject to the prelatical, presbyterian, or congregational form of government.

The Court has read carefully the evidence of Rev. Pepper and Rev. Patterson. These two ministers go pretty thoroughly into the history of the Separate Baptist Denomination. The Court has read numerous Court decisions, both domestic and foreign and based thereon, is of the firm opinion that the Separate Baptist Churches are independent or congregational in their government and their affairs are controlled by a majority of their members, not by a Bishop or Presbytery.

It is true that for many years, the Nolynn Associates has had a Presbytery Board, certainly as far back as 1919, possibly farther. This Board was concerned only with ordaining deacons and ministers, until 1967 when the By-Laws of the Association were amended so as to give the

Association authority to control a local church, if the Church was no conforming to what the Association considered acceptable as to not only doctrine but all other matters.

The Oak Grove Church possesses all the characteristics of a local independent church. (1) It owns its property, that is there is no trust or other restriction imposed upon the Church's property, or giving to some other body, or authority, control over it. (2) What appears to be the Church constitution or creed, dated 1882, expressly states that it is a self-governing body—a majority of its members to control in all matters. (3) There is no organic tie, or connection, such as corporation, ownership of property, creed, or constitution, which binds the Church to the Association—as the word Association itself implies, the Association is no more than a volunteer organization of the various churches. As such, a Church has a right to withdraw its membership from the Association and the Association can expel or dismiss a Church from membership for any reason a majority of the delegates might deem proper.

In the recent case of *Mullins* v. *Elswick,* Ky., 438 S. W. 2d 496 (1968), involving a Freewill Baptist Church, the Court held that a majority of the membership of a Church having a congregational form of government have the right to withdraw from the Association. Like wise, this case holds, and other cases cited therein, that a Church does not lose its independence, or congregational form of government, by joining an Association.

There are several kinds of Baptist Denominations. To name some: Missionary Baptist, Freewill Baptist, Landmark Baptist, General Baptist, Separate Baptist, United Baptist, Primitive Baptist, Hardshell Baptist, some, or all of them, differ on some points of doctrine. Some believe in "Foot Washing" others do not; some believe in an unpaid ministery, some believe the ministers should be educated, some do not. There are however, two main character-

istics which are the distinguishing features of all Baptist Churches, and that is Baptism by immersion, and the independence of the local church.

In this case the issue is a narrow one. Counsel agree that if the Oak Grove Separate Baptist Church is an independent Church, congregational in its government, then the Association and its Presbytery Board has no power or control over it. On the other hand, if the Separate Baptist Churches, which includes Oak Grove, are subject to the presbyterian form of Church government, as is set forth in the By-Laws of the Nolynn Association, then, the Association and the Presbytery Board have the right to control the Oak Grove Church to the extent here attempted.

Based on the evidence, history, and written documents, the Court is of the Opinion that the Oak Grove Separate Baptist Church is an independent local church, and is entitled to conduct its affairs according to the congregational form of church government.

This the 18th day of June, 1969.

C. R. WALDEN, *Special Judge,*
Green Circuit Court.

Attorney for Plaintiffs:
J. WOOD VANCE, JR.
Glasgow, Kentucky

Attorneys for Defendants:
RITHERD & RICHARDSON
Glasgow, Kentucky

BY-LAWS OF THE NOLYNN ASSOCIATION AND THE ARTICLES OF FAITH ADOPTED BY THE CHURCHES AND IN EFFECT AT THE TIME THESE SUITS AROSE.

ARTICLES OF FAITH

Article 1—We believe that the scriptures of the Old and New Testaments are the infallible word of God and the only safe rules of faith and practice. II Tim. 3:16, 17.

Article 2—That there is in the Godhead three divine personages, The Father, Son and Holy Ghost. I John 5:7.

Article 3—That man is in a fallen state before God and is unable to liberate himself by any ability he possesses by Nature. Rom. 8:1-20.

Article 4—That Salvation, regeneration, sanctification, justification, and redemption are through faith in the life, death, resurrection, ascension and intercession of our Lord and Saviour Jesus Christ. Heb. 9:25, Eph. 4:9 and Rev. 1:18.

Article 5—We believe he who endures to the end, the same shall be saved. Matt. 24:13, Rev. 2:10.

Article 6—That the joys of the righteous and the punishment of the wicked will be eternal. Matt. 25:46.

Article 7—We believe that Baptism, the Lord's Supper and feet washing are ordinances of Jesus Christ appointed in the church and none but true believers are proper subjects and the only proper mode of baptism is immersion of the believers. Rom. 6.3-4; Luke 22:30. Also I Cor. 11:27-29.

Article 8—We believe in the sanctity of the first day of the week or the Lord's Day which ought to be observed and spent in public or private worship of God, and that we should refrain from our worldly concern, except in cases of necessity or mercy. Ex. 31:15-17; Deu. 5:15; Luke 23:56.

Article 9—We believe in the resurrection of the body of both the just and the unjust, but every man in his own

order, they that have done good to the resurrection of life, and that God hath appointed a day in which He will judge the world in righteousness by Jesus Christ. St. John 5:28-29; I Thes. 4:16; and Dan. 12:2.

Article 10—That it is our duty to be tender and affectionate to one another and honoring and preferring one another to study the happiness of God's people in general and to do all we can to support, promote and spread the gospel. Rom. 12:10; Gal. 6:16, and II Cor. 9:15.

Article 11—We believe that Jesus Christ by the grace of God tasted death for every man and none can partake of His divine benefits only by repentence toward God and faith in the Lord Jesus Christ, infants and idiots excepted, they being included in the covenants of God's grace. Acts 10:44; St. John 3:4-17; I Cor. 15:20-22, and Rom. 5:15.

Article 12—We believe in the Bible as the only discipline for the Church. Matt. 28:18-20.

Article 13—That all gifts and callings in the church are of God by the Holy Spirit and that all offices and gifts of the apostolic and presence and power of the spirit in any individual, by setting church should be recognized by our churches when manifested by them apart from the work of the Gospel.

Article 14—We believe in open communion to all Christians. I Cor. 11:27-29.

BY-LAWS OF THE NOLYNN ASSOCIATION

1. The Presbytery of the Association, recommend, for the future guidance of the Association, when a church has chosen a person or persons to be a deacon, that before he is duly elected to the office of a deacon that the church notify the Presbytery of the Association to meet with their officials to investigate the person or persons' qualifications and to find out his or their stand on Separate Baptist doctrine.

It shall be the duty of the Presbytery and the officials of his church to give him such instructions that are necessary, both in qualifications and in Separate Baptist doctrine. After this, if duly elected by the church as a deacon, that person shall serve as an apprentice for 12 months and then if he proves to be worthy and he still wishes to take the office of a deacon, they, the Presbytery, shall fully ordain him and grant him license, so long as he fulfills the office of a deacon. Should the time come that he fails to fill the office of a deacon, it shall be the duty of his church to notify the Presbytery of the same, and it shall be the duty of the Presbytery to call for his identification card and report the same to the Association.

2. We, the Presbytery of the Association, recommend, for the future guidance of the Association, when a church has been informed that God has called a person or persons to the office of a minister, that before the church gives him a license, they shall notify the Presbytery of the Association to meet with their officials to investigate the person or persons' qualifications and to find out his or their stand on Separate Baptist doctrine.

It shall be the duty of the Presbytery and the officials of his church to give him such instructions that are necessary, both in qualifications and in Separate Baptist doctrine. After this, if duly elected by the church as a minister, that person shall serve as an apprentice for 24 months and then if he proves to be worthy and he still wishes to take the office of a minister, they, the Presbytery, shall fully ordain him and grant him a license, so long as he fulfills the office of a minister. Should the time come when there is a question of whether he is filling the office of a minister, then the deacons of his church should bring him before the church and the church turn him over to the Presbytery Board and if they find him guilty, his credentials be suspended.

That when a minister's credentials have been revoked for any reason, that he shall be relicensed and reordained

as a new minister as stated in the above paragraphs of this article.

3. The Presbytery Board is to be elected as in the past, but in 1967 an election be held for two alternate members with one elected for a one-year term and be known as the first alternate and the other elected for a two-year term and be known as the second alternate. After 1967 alternates are to be elected to two-year terms with one expiring each year.

(a) In any case of sickness or death or where the candidate in question is related to a regular member or where preference or prejudice is evident, the regular member must step aside and the first alternate will take his place.

4. To clarify the position of the Presbytery, it is as follows:

(a) The Presbytery has the (Ecclesiastical) right and power to investigate any ordained official or any serious matter in the churches that may affect the harmony and doctrine of this Association and has the power to deal with such, as they deem proper.

(b) The Moderator or the Presbytery has the right to select committees at any time to assist in investigations and recommendations, as they deem necessary.

(c) All deacons and ministers are required to live and conduct themselves in a Christian manner and be in harmony with the Association at all times.

5. No minister shall pastor a Separate Baptist Church in the Nolynn Association until he is fully ordained.

6. When a minister leaves the Separate Baptists and joins another denomination of churches and then comes back and joins the Separate Baptist again, such person would have to be re-ordained before he could be a pastor of a Separate Baptist Church.

7. We further recommend that a group of people who desire to unite in the organization of a church that before they take the church covenant and become an organized body of Brothers and Sisters in Christ that the Pastor or leader of the group shall notify the Presbytery of the Association and shall invite them to a meeting with the body for the purpose of a full understanding of the orthodox belief of Separate Baptist Churches in Christ, and if found to be sound in the faith that the time set for the organizing of the body and taking the church covenant. The officials of the Association shall have due and timely notice and no church will be received into this body unless there were two ordained ministers at the organization hereafter.

8. The mode of receiving a church into the Association shall be as follows:

After a church has become fully organized and it applies for membership by letter and messengers to the Association, the moderator shall appoint a committee of three or more to meet with said church to investigate the orthodox doctrine of the church. If the committee gives them a good report and the Association votes favorably they shall be in full fellowship.

9. The mode of dismissing a church from the Association shall be as follows:

If the time should come that the church would desire to withdraw from the Association, each member of the church shall be duly notified of the desire to withdraw and the reason for separating from the Association. Should the majority of the members present vote to withdraw from the Association, they shall prepare a letter and meet the Association in the regular meeting or a special called meeting. The said church shall present their letter of aggrievements to the Association. The Association shall appoint a committee of three or more to meet with said church and try to reconcile their aggrievements. If no reconciliation is made the matter will be decided in the body of the Association.

If the Association votes to dismiss them by a majority, they will receive a letter of dismissal; and if not they will remain a member of the Association.

10. All officers of this Association shall be elected by nomination and secret ballot.

STAGES IN GREEN CIRCUIT COURT AND COURT OF APPEALS OF KENTUCKY AT WHICH, AND MANNER IN WHICH, THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED.

Alleged in Complaint #1647 Green Circuit Court (Transcript, pages 3 and 4):

Paragraph 1.

"Said organization was formed to promote and control the churches and ministers and the modes and methods of its religious doctrines. Said organization has adopted Articles of Faith and By-Laws.

"Oak Grove Separate Baptist Church is a member of the Nolynn Association of Separate Baptist in Christ of Kentucky, and comes under the control and By-Laws of said organization"

"The plaintiffs say that unless the defendant is immediately enjoined from preaching and filling the minister's duties in the pulpit at the Oak Grove Separate Baptist Church, the plaintiffs rights will be violated causing them immediate and irreparable injury for which the plaintiffs have no adequate remedy at law."

Answer to #1647 alleged (Transcript, page 10):

Paragraph VI.

"VI. The temporary injunction that has been issued does, and the permanent injunction that has been demanded would, violate the substantial rights of the

defendant, which are guaranteed by the First Amendment to the Constitution of the United States and Section I of the Bill of Rights of the Commonwealth of Kentucky, specifically, the defendant's right of free exercise of his religion is being violated due to the fact that he is not allowed to preach or worship at the Oak Grove Separate Baptist Church in Christ of Green County, Kentucky, where he is a member and is duly elected and called pastor."

Paragraph VII.

"VII. The temporary injunction does, and the permanent injunction would, further violate the substantial constitutional rights of the defendant, which are guaranteed by the First Amendment to the Constitution of the United States of America and Section I of the Constitution of the Commonwealth of Kentucky, specifically, the defendant's right to freedom of speech is being abridged by restraining the defendant from preaching at Oak Grove Separate Baptist Church in Christ of Green County, Kentucky."

Paragraph X of the Answer alleged (Transcript, page 1):

"X. The injunction restraining the defendant from preaching at said Oak Grove Church further violates the defendant's right of freedom to contract for his services as a minister."

A reply was filed in #1647 denying that the constitutional rights of the defendant under the 1st Amendment of the United States Constitution were being violated by enjoining him from preaching at the church after his being dis-ordained (Transcript, page 14).

"3. Plaintiffs deny the allegations as set out in Defendant's Answer under Paragraph 3, Paragraph 4,

Paragraph 5, Paragraph 6, Paragraph 7, Paragraph 9, and Paragraph 10."

In Complaint #1655 filed in the lower court by the Church seeking an injunction against the Association and by necessary intendment it alleged that the rights of the church were being violated under the First Amendment (Transcript, page 33).

Paragraph VI.

"6. That the defendants are about to deprive the plaintiff, the Oak Grove Separate Baptist Church in Green County, Kentucky, the officers thereof, and the individual members thereof of their rights as follows:

A. The right of the church to elect its officers, conduct the affairs of the church, the right to conduct religious services, and the right of freedom of speech and assembly.

B. The property of the Plaintiff Church is being taken without process of law.

C. That rights of the Plaintiff Church and the individual members thereof have been violated in that the defendants have wrongfully disregarded the majority vote of the membership of the church."

The Association filed a motion and notice to #1655 moving that the temporary injunction against the Association be set aside and alleged (Transcript, page 39):

"Plaintiffs state that many of the members are being deprived of their privilege of going to church and sunday school and participating in church affairs and that this should not exist during the pendency of this action. That no harm can come from the governing body (Presbytery Board) conducting these services and

would deprive no one of the right to worship when and where he pleases and would be in the best interest of all parties concerned."

A response to the motion above filed in #1655 stated:

"and that the defendants move for a dissolution of the restraining order served upon them by which they are specifically denied the right to worship, preach and conduct religious services in the Oak Grove Separate Baptist Church"

The Nolynn Association and the Presbytery Board filed Complaint #1651 in the Circuit Court and its language shows necessary intendment of the violation of the First Amendment (Transcript, page 21):

"10 Plaintiffs state that the rights of the members of the Oak Grove Baptist Church who are abiding or attempting to abide by the rules and regulations of the Presbytery are being violated by the defendants because they are being denied entrance to this church; are being deprived of the keys to said church; are being denied the right and privilege of their services being conducted by the duly selected and ordained minister as provided for by the Presbytery; are being denied the privilege of being a member of their own church even though they are abiding by the by-laws of said church and in conformity with the rules and regulations of the governing body of said church and Association; and thus are being denied the right to worship where and when they please"

In Answer filed in #1651 the defendants alleged (Transcript, pages 27 and 29):

"1. That no person has been refused the right and privilege of worship in the Oak Grove Separate Bap-

tist Church in Green County, Kentucky, by any of the defendants herein, and that none of the plaintiffs have been denied any right in any way associated with their membership in said Oak Grove Separate Baptist Church in Green County, Kentucky."

"7. That the defendants, Ralph Jeffries, Curtis Jeffries, Cosby Gentry, Choloren Conley, Ivan Jones and Ivan Compton, and the Oak Grove Separate Baptist Church in Green County, Kentucky, as a body, believe and adhere to the teachings, philosophy and religion of the Separate Baptist Church in Christ of Kentucky, but that the plaintiffs have attempted, and by the temporary injunctions previously issued herein, are about to deprive the Oak Grove Separate Baptist Church in Green County, Kentucky, the defendants, and the individual members of the following rights:

1. The right of the church to elect its own clerk, moderator, assistant clerk, Sunday School Teachers, Minister and Sunday School Superintendent, who are defendants listed in order in this action;
2. Their right to worship.
3. All of their rights as members of the Oak Grove Separate Baptist Church in Green County, Kentucky, and the rules of said church have been violated by the plaintiffs . . .
4. The rights of ownership of the church building and real estate have been wrongfully taken from the Oak Grove Separate Baptist Church in Green County, Kentucky.
5. The rights of the Oak Grove Separate Baptist Church in Green County, Kentucky, as a congregationalist, individual, independent, self-governing church have been disregarded, abridged and will be further violated by the acts of the plaintiffs."

By order Complaints above were consolidated.

The Green Circuit Court in its Opinion said (Transcript, pages 50 and 53):

> "It is the contention of the Church that it is an independent, self-governing body and as such the Association has no authority over its internal affairs and besides it has withdrawn its membership from the Association: The basic question to be determined by the Court is whether the Church is an independent, self-governing local Church, or is its affairs, to the extent sought here, subject to the control of the Association."
>
> "Likewise, this case holds, and other cases cited therein, that a Church does not loose its independence or congregational form of government, by joining an Association."
>
> "On the other hand, if the Separate Baptist Churches, which includes Oak Grove, are subject to the presbyterian form of church government, as is set forth in the By-Laws of the Nolynn Association, then, the Association and the Presbytery Board have the right to control the Oak Grove Church to the extent here attempted."

After Notice of Appeal to Court of Appeals was filed Petitioners filed a motion with said Court moving for an order allowing the Presbytery Board to exercise the By-Laws during the pendency of the appeal and in same stated that they would have this right under Watson v. Jones, 80 U. S. 679, 13 Wall 679; 20 L. Ed. 666, as follows (Transcript, pages 657 and 658):

> "In the case of a religious congregation which is itself part of a large and general organization of some religious denomination with which it is more or less intimately connected by religious views and ecclesi-

astical government, questions of discipline, or of faith, or ecclesiastical rule, custom of law which have been decided by the highest of the church judicatories to which the matter has been carried, must be accepted as final and as binding by legal tribunals"

In Petitioners' brief to the Court of Appeals was stated (Transcript, page 681):

"It is our contention that the secular court should not take jurisdiction over the verdict of a religious body exercising disciplinary action taken against ministers in accordance with the rules and regulations of the body designated to take any disciplinary action called for. Interference or taking jurisdiction over this would be in violation of their rights as a religious body under the First Amendment of the U. S. Constitution and would be contrary to the latest decisions handed down by the United States Supreme Court and in conflict with the decisions handed down by the Court of Appeals of Kentucky over a very long period of time. In Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Pres. Church, 89 S. Ct. 601 (1969) it was said:

'All who unite themselves to such a body (the general church) do so with an implied consent to (its) government, and are bound to submit to it . . .'"

Also in the brief to the Court of Appeals it was stated:

"And at the time this case was decided they had been afforded federal constitutional protection against being taken over by any State court as to their decisions, where no fraud or collusion was exercised."

The Court of Appeals in its Opinion considered the First Amendment and Presbyterian Church v. Mary Elizabeth Blue Hull and the application of same to transfer of

authority from the Association to the Church and change in the doctrines of the Association as follows (Transcript, page 685; Appendix to Petition for Rehearing):

> "The Association argued that no local church could withdraw without the Association's approval because the By-Laws of the Association required it. The Appellees contend that these by-laws which had appeared in print only in recent years (the withdrawal regulation appeared in 1966, less than two years prior to the commencement of the controversy between Oak Grove Church and the Association) are an assumption of power by the Board unwarranted by traditional Separate Baptist Church organization.
>
> Because freedom of religion is protected by the First Amendment, the courts ordinarily are unwilling to become involved in the resolution of controversies over religious doctrines and practices. Presbyterian Church in the United States v. Mary Elizabeth Blue Huff Memorial Presbyterian Church, 393 U. S. 440, 21 L. Ed. 658, 89 S. Ct. 601 (1969); Pelphrey v. Cochran, ____ S. W. 2d ____, February 27, 1970. Religious disagreements are more appropriately settled by the person or group of persons who, according to the type organization employed in the particular church, have been vested with decision-making authority. The center or location of organizational authority varies with different sects and its location is really the chief issue here. Courts have accepted jurisdiction, in cases involving the withdrawal of a local church from the general church, for the very limited purpose of determining the nature of the church government"
>
> "Membership in an association does not prevent the church government from being congregational in form"

In the petition for a rehearing by the Court of Appeals we stated (Transcript, page 685):

"The question in this case is whether churches that unite and bind themselves together with laws and Articles of Faith are bound by the decisions of their religious tribunal and whether or not secular courts can take jurisdiction or interfere with the judgments made by the religious tribunals set up by these churches to settle their disputes and regulate and enforce their doctrines. It is not a question of what they were before they united themselves. It is not a question of their changing their laws over the years or what powers they exercised many years ago or five years ago or ten. The question is whether or not these people have a right to exercise their type of religion, in the manner they have selected and whether or not the State Courts have a right to interfere with their exercise of this religion. Are you denying them their freedom of religion under the provisions of the First Amendment of the United States Constitution which says:

> 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof'

"We must recognize the federal constitutional protection these religious groups now have. The Supreme Court of the United States didn't say that part of the churches that unite themselves; it didn't say the non-congregational churches that unite themselves; it didn't say small churches that unite themselves; it didn't say small member churches or large member churches; it said ALL WHO UNITE THEMSELVES TO SUCH A BODY. Again we repeat what the Supreme Court has just said in this regard and the print has hardly dried on same: Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 21 L. Ed. 658, 89 S. Ct. 601 (1969)"

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

I certify that a true copy of this Brief was served on J. W. Vance, Jr., Yancey Bldg., Glasgow, Ky., counsel for petitioners, by U. S. Mail, first class, postage prepaid.

This 21 day of January, 1971.

COUNSEL FOR RESPONDENTS

INDEX

	PAGE
Table of Cases	ii
Question Presented	1
Counterstatement	2–3
Argument and Reasons for Denying the Writ	3–8
Conclusion	9

TABLE OF CASES

Cases:

	Page
Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969)	3, 4, 6, 7, 8
Maryland and Virginia Eldership of the Churches of God v. the Church of God at Sharpsburg, Inc., ___ U. S. ___, 90 S. Ct. 499, ___ L. Ed. 2d ___ (1970)	4, 5, 8
Watson v. Jones, 80 U. S. 679, 20 L. Ed. 666 (1872)	4

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1120

NOLYNN ASSOCIATION OF SEPARATE BAPTIST IN CHRIST OF KENTUCKY; WHEELER DAVIS, S. C. JOHNSON, J. A. HUFF, Members of Presbytery Board of Nolynn Association of Separate Baptist in Christ of Kentucky; F. T. PEPPER; SAM GENTRY; LESLIE GENTRY; ROXIE DAVENPORT; COVIS MORGAN; ROY MORGAN; J. H. BLOYD; ARMAN DAVIS; OLLEN DAVENPORT; RALPH LOOM; SAMUEL DAVIS - - - - - - - - *Petitioners*

v.

OAK GROVE SEPARATE BAPTIST CHURCH; TERRY BISHOP; RALPH JEFFRIES; CURTIS JEFFRIES; COBBY GENTRY; CHOLOMEN CONLEY; IVAN JONES; IVAN COMPTON - - - *Respondents*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

QUESTION PRESENTED

Whether civil courts can, without invading First Amendment guarantees, identify the governing authority of a church, if the court does not inquire into religious creeds and doctrines?

COUNTERSTATEMENT

This case is the culmination of a dispute between Nolynn Association of Separate Baptists in Christ of Kentucky, petitioners herein, and Oak Grove Separate Baptist, respondents herein.

This case originated with the petitioners filing in the Green County, Kentucky, Circuit Court, Civil Action # 1647 whereby the pastor of respondent church and various other church officials were enjoined from performing their duties. Respondents answered, alleging themselves to be an autonomous local unit, having a congregational type of church government and that the injunctive action would violate their First Amendment right of religious freedom. Respondents also countered with a suit for injunctive relief, containing substantially the same allegations as their defense, and obtained a restraining order whereby petitioners were enjoined from interfering with the operation of the church in a manner contrary to the wishes of a majority of the church.

Petitioners alleged they held authority over local churches in face of Respondents contention of autonomy and congregational government.

No allegations, nor evidence, are in the record which point up a controversy over matters of faith and no question has arisen regarding a "departure from the faith."

The petitioners, to sustain their allegations, relied on purported By-Laws of the Nolynn Association.

The respondents based their contention that respondent church was of the type which had a congrega-

tional government on the following powers traditionally exercised by the Oak Grove Church, viz: *the selection of its pastor and other church officials by majority vote of the church; the control of all financial affairs of the church; the use of the church property in a manner determined by a majority of the church. The respondents also relied on the facts that the title to the church real estate is vested in the trustees of the church, without the imposition of any trust or organic tie and that the constitution of the church required all matters of church business to be determined by a vote of the majority of the church.*

The only question which arose in the action for judicial decision was, Is the Oak Grove Separate Baptist Church a congregationally governed church?

The question was answered in the affirmative, thereby allowing the church to govern its own internal affairs according to the wishes of the majority.

(See Finding of Fact & Conclusions of Law, Green Circuit Court, Petition for Writ of Certiorari, pp. 25-30; Opinion of Kentucky Court of Appeals, Petition for Writ of Certiorari, pp. 19-22.)

ARGUMENT AND REASONS FOR DENYING THE WRIT

The instant case does not involve a situation like that presented in *Presbyterian Church In the United States, et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U. S. 440, 89 S. Ct. 601. No issue was raised in that case as to the type of church government, and the Court commenced its opinion by a

statement of facts, declaring the Presbyterian Church in the United States to be governed by a hierarchial structure of tribunals, with the General Assembly being the highest governing body. (*Hull Memorial Presbyterian Church, supra*, at 441, 442.)

This case is of the type referred to in the concurring opinion of Mr. Justice Brennan in *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, ___ U. S. ___, 90 S. Ct. 499, at page 500. The opinion of Mr. Justice Brennan was to the effect that civil courts could enforce the property decisions of the ecclesiastical government of a church as provided in *Watson* v. *Jones*, 80 U. S. 679; 20 L. Ed. 666 (1872). However, where the question of identification of the governing body of a church is the issue, the opinion stated,

> ". . . Where the identity of the governing body or bodies which exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage which would be essential to the resolution of the controversy. *In other words, the use of the Watson approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity.*" (Emphasis added.)

The only issue presented to the lower courts was, What is the highest governing body in the Oak Grove Separate Baptist Church? The respondent, Oak Grove

Church, contended that a vote of the majority of the local church was the ultimate decision, from which there could be no appeal, ecclesiastically or civilly.

To support this contention they relied on the church constitution which provided for all business of the church to be decided by a majority vote and on the powers traditionally exercised by the local church, viz: the selection of its own pastor, the absolute control of its own finances and selection of all church officials. Reliance was also had on the deed to the church real estate which conveyed the real estate to the trustees of the Oak Grove Separate Baptist Church, absolutely, without the burden of any trust or organic tie to any general denomination. Even more, all Baptist churches have been historically known as congregationally governed churches.

The trial court did not delve into church doctrines or faith, but in conformance with *Sharpsburg, supra*, looked to the obvious characteristics of the respondent church, which characteristics are peculiar to congregational churches, as is evidenced by the following extract from its opinion,

> "The Oak Grove Church possesses all the characteristics of a local independent church. (1) It owns its property, that is there is no trust or other restriction imposed upon the Church's property, or giving to some other body, or authority, control over it. (2) What appears to be the Church constitution or creed, dated 1882, expressly states that it is a self-governing body-a majority of its members to control in all matters. (3) There is no organic tie, or connection, such as corporation,

ownership of property, creed, or constitution, which binds the Church to the Association—as the word Association itself implies, the Association is no more than a volunteer organization of the various churches." (Findings of Fact & Conclusions of Law, Green Circuit Court, pp. 7-8.)

The Kentucky Court of Appeals was cognizant of the *Hull* Case, and in fact referred to it in its opinion (see Opinion of the Court of Appeal of Kentucky, Petition for Writ of Certiorari, page 20) where the Kentucky court cited *Hull* and stated,

> "Religious disagreements are more appropriately settled by the person or group who, according to the type organization employed in the particular church, have been vested with decision making authority. The center or location of organizational authority varies with different sects and its location is the chief issue here. Courts have accepted jurisdiction, in cases involving the withdrawal of a local church from the general church for the very limited purpose of determining the nature of the church government."

That court recognized that no questions of creeds, or doctrines arose, and it only considered obvious characteristics of the respondent church when it stated,

> "There was evidence introduced in this case that the Oak Grove Separate Baptist Church attended to its own affairs, handled its own finances and selected its own church officials. A document purporting to be the original constitution of the Oak Grove Separate Baptist Church when it was known as Mount Carmel Church, states that all

business should be done by the majority of the church. The property of the church is held in the name of the trustees of Oak Grove Baptist Church." (See Court of Appeals Opinion, Petition for Writ of Cert., page 21.)

The First Amendment protects the free exercise of religion. If the civil courts cannot intervene in cases of this type, then all congregationally governed churches of this nation will lose their autonomy and thus the free exercise of their religion. In such instances all that is necessary to stifle congregationally governed churches, especially Baptists, is for the voluntary associations or conventions to declare they have supreme power over the churches. If Courts have no jurisdiction, the local churches have no place to redress their grievances, no place to have their rights protected. One could not logically assume this was the meaning of the First Amendment or of the *Hull* case, *supra*.

The First Amendment guarantee of freedom of religion implies that the government will use its powers to protect the right of persons to be governed in religious matters as they desire. To make this guarantee effectual, courts must protect the usurpation of power in religious governments. Courts may not usurp religious authority by overruling the highest authority of a church, but neither should the courts stand idly by and allow a congregationally governed church to be overthrown by the mere allegation of a group that they are the highest tribunal instead of the majority of the church.

The lower courts faced the only issue presented to them and determined that the Oak Grove Separate Baptist Church was a local, autonomous unit, congregationally governed. This decision was made without inquiring into the doctrine or faith of the denomination, but rather was made from the obvious and outward characteristics of the church which are hallmarks of congregationalism. Such a determination, when made in the manner thus employed, is not prohibited by the decision of the *Hull* case, *supra*. There civil courts are directed to decide such disputes without resolving or underlying controversies over religious doctrines, and without interpreting religious doctrine.

A limited decision, as rendered in this case, is necessary to maintain order. Without a decision of authority, the controversy over where the authority in this church is located will rage on. We cannot allow the controversy to be determined by which group has the greatest physical force. The courts must at some point make at least a very narrow and limited determination, as was suggested in the *Sharpsburg* case, and as was done by the lower courts in this case.

The question in this court therefore resolves itself to be: Whether courts may constitutionally determine the type of government prevailing in a church, when no inquiry is made into religious doctrines? Respondents answer in the affirmative.

CONCLUSION

For the foregoing reasons, Respondents respectfully contend the writ of certiorari should not be issued.

CARROLL M. REDFORD
REDFORD & REDFORD
Glasgow, Kentucky

SHELLEY T. RIDEID
BOBBY H. RICHARDSON
RIDEID & RICHARDSON
117 E. Washington St.
Glasgow, Kentucky

Counsel for Respondents